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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/305,417 05/05/99 SWIFT

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MMC2/0411

EXAMINER

CHURCH, C

ART UNIT

PAPER NUMBER

2876

DATE MAILED:

04/11/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

## Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- ☒ Responsive to communication(s) filed on 1/19/2000
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1-7 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-7 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_.

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Claim 7 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is no antecedent basis for "the cargo container" in claim 7.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-7 are rejected under 35 U.S.C. § 103 as being unpatentable over Husseiny. Figure 40 of Husseiny shows motorized bed 901 carrying a source 904 of penetrating radiation projected at an object 903 and scatter detector 905. Data processing means analyze the detector output signals. See lines 34 et seq of column 39. Lines 10-18 of column 1 explain that the invention may be employed to detect explosives and contraband in cargo containers, and such a scenario would inherently dictate that the x-ray beam

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would be horizontal. It would have been obvious to one of ordinary skill in the art at the time the invention was made to orient the x-ray beam horizontally for the inspection of cargo containers. Further the use of a reversible drive to scan containers in two directions or for other purposes such as parking or for avoiding large objects would have been common and obvious as would have been means for adjusting beam orientation.

Applicant's arguments filed January 19, 2000 have been fully considered but they are not deemed to be persuasive. Applicant's contention that the figure 40 embodiment of Hussein is not capable of and was not intended for inspection of cargo containers is untenable and unsupported by fact. Lines 10-18 of column 1 of the patent are not directed to any one of the four embodiments perceived by applicant but are clearly directed to the entire disclosure:

The invention relates generally to a non-vapor system for detection of concealed contraband including all types of explosives or drugs in carry-on baggage and hand-held items; contraband in checked-in baggage and air cargo as well as freight containers; explosives carried by individuals across a security check point, drugs concealed in hidden compartments aboard planes, leisure boats or ships; and buried explosive-filled ordnance such as antipersonnel, anticraft and antivehicle mines.

There is no reason to believe that the figure 40 apparatus cannot be employed to scan a container as taught by Hussein simply by orienting the x-ray beam to be horizontal.

The use of a reversible drive to scan containers in two directions or for other purposes such as parking or for avoiding

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large objects would have been common and obvious as would have been means for adjusting beam orientation. Merely making a known element of a combination adjustable does not impart patentability. See Marconi Wireless Telegraph Company Of America v. United States, 320 US 1, 31-32, 57 USPQ 471 484-485 and In re Schneider, 148 F.2d 108, 65 USPQ 129.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Examiner Church at telephone number (703) 308-4861..

*Craig E Church*

CRAIG E. CHURCH  
Senior Examiner  
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